

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 BRYAN DRYDEN,

Case No. 2:16-cv-01227-JAD-EJY

5 Plaintiff,

**ORDER**

6 v.

7 STATE OF NEVADA, *et al.*,

8 Defendants.  
9

10 Before the Court is Plaintiff Bryan Dryden's First Motion to Compel Discovery (ECF No.  
11 106); Plaintiff's Second Motion to Compel Discovery (ECF No. 107); Plaintiff's Motion to Appoint  
12 Private Investigator (ECF No. 108); Plaintiff's Motion for Appointment of Counsel (ECF No. 109);  
13 Plaintiff's Motion for Preliminary Injunction (ECF No. 110); Plaintiff's Motion for Temporary  
14 Restraining Order (ECF No. 111); Plaintiff's Third Motion to Compel Discovery (ECF No. 120);  
15 Plaintiff's Motion for Leave to File Reply to Defendants' Opposition for a Preliminary Injunction  
16 and Temporary Restraining Order (ECF No. 124); Plaintiff's Fourth Motion to Compel Discovery  
17 (ECF No. 125); and, Plaintiff's Motion to Extend Discovery (ECF No. 127). The Court has also  
18 reviewed Defendants Ted Nielson and Kenneth Osborne's Response to Plaintiff's First Motion to  
19 Compel Discovery (ECF No. 114); Defendants' Response to Plaintiff's Second Motion to Compel  
20 Discovery (ECF No. 115); Plaintiff's Reply to Defendants' Response to Plaintiff's First and Second  
21 Motions to Compel Discovery (ECF No. 121); Defendants' Response to Plaintiff's Motion to  
22 Appoint Private Investigator (ECF No. 118); Defendants' Response to Plaintiff's Motion for  
23 Appointment of Counsel (ECF No. 119); Plaintiff's Reply to Defendants' Response to Plaintiff's  
24 Motion for Appointment of Counsel and Private Investigator (ECF No. 123); Defendants' Response  
25 to Plaintiff's Motion for Preliminary Injunction (ECF No. 116); Defendants' Response to Plaintiff's  
26 Motion for Temporary Restraining Order (ECF No. 117); Defendants' Response to Plaintiff's Third  
27 Motion to Compel Discovery (ECF No. 122); and, Defendants' Response to Plaintiff's Fourth  
28 Motion to Compel Discovery (ECF No. 126). The Court finds as follows.

1     **I.     BACKGROUND**

2             Plaintiff Bryan Dryden is an inmate incarcerated in the Nevada Department of Corrections  
3     (“NDOC”), and currently housed at High Desert State Prison (“HDSP”). Plaintiff alleges that on  
4     January 8, 2014, Defendant Correctional Officer (“CO”) Kenneth Osborne placed Plaintiff, a  
5     Protective Custody (“PC”) inmate, in a transport van full of General Population (“GP”) inmates at  
6     the Clark County Detention Center (“CCDC”). ECF No. 35 at 6–7. Osborne allegedly informed the  
7     GP inmates that Plaintiff was a “snitch” and was supplying evidence to the state of Nevada, leading  
8     the GP inmates to threaten to kill Plaintiff and make aggressive derogatory remarks. *Id.* at 7.  
9     Plaintiff supposedly yelled for the officers to help him at which point another CO, Defendant Ted  
10    Nielson, “ordered the plaintiff against the wall[] while plaintiff was in [f]ull restraints[,] . . . slammed  
11    plaintiff into the wall [and] into the transport van . . . in plain view of the jail cameras, caus[ed]  
12    Plaintiff’s eyebrow to lacerate, and threatened to murder plaintiff.” *Id.* Once the transport van  
13    arrived at HDSP, Plaintiff alleges that Defendant Nielson continued his assault in plain view of  
14    Sergeant Joseph who failed to stop Nielson from supposedly beating Plaintiff.<sup>1</sup> *Id.* at 7. After  
15    sending Plaintiff to the infirmary for treatment, Defendant Nielson warned Plaintiff to “[n]ot [f]ile a  
16    grievance or else.” *Id.* at 8. Approximately three weeks later, on January 29, 2014, Plaintiff alleges  
17    Defendant Nielson threw him against a wall, and warned Plaintiff that if he continued with the  
18    grievance process, Nielson would find a way to kill him. ECF No. 106 at 3.

19             On June 18, 2019, Plaintiff claims Defendant Nielson placed Plaintiff in a court holding tank  
20    full of GP inmates. ECF Nos. 110 and 111 at 3. Plaintiff contends that his experience is one of  
21    numerous similar events over the last few months in which a PC inmate has been deliberately placed  
22    into holding tanks with GP inmates, with COs urging GP inmates to beat the PC inmate and  
23    rewarding them for doing so. *Id.* at 4. Despite filing multiple grievances repeating these allegations,  
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27             <sup>1</sup> As of the May 22, 2018 Screening Order issued by United States District Judge Jennifer A. Dorsey, Sergeant  
28    Joseph was dismissed from this case. ECF No. 34.

1 Plaintiff claims NDOC Warden Brian E. Williams, Sr. has denied that Defendant Nielson has had  
2 any contact with Plaintiff. *Id.* at 5. The most recent denial allegedly occurred on June 18, 2019.<sup>2</sup>  
3 *Id.*

4 On June 23, 2019, NDOC issued an Inmate Grievance Report denying Plaintiff's grievance  
5 and stating:

6 When it became apparent that inmate Dryden, Bryan . . . was on a randomly  
7 assigned court transport run with Officer Ted Nielson, it was immediately decided  
8 to have the second Transport Officer Adam Burnside be the hands on escorting  
9 Officer for [inmate] Dryden. The Transportation Office was notified. Correctional  
10 Officer Neilson [sic] had no conversation with inmate Dryden and no direct contact.  
11 Inmate Dryden has made false claims of assault against C/O Nielson prior. In lieu  
12 of that, the NDOC Lieutenant has ordered that C/O Nielson not to be involved in  
13 any future escorts involving inmate Dryden.

14 *Id.* at 9 ("Inmate Grievance Report").

15 **A. Plaintiff's Motions to Compel Discovery (ECF Nos. 106, 107, 120, 125)**

16 To date, Plaintiff has filed four Motions to Compel. *Id.* Plaintiff's First Motion to Compel  
17 asks the Court to compel Defendant Kenneth Olson to fully answer Interrogatory No. 4 (set one)  
18 signed June 24, 2019.<sup>3</sup> ECF No. 106 at 1. Plaintiff also asks the Court to compel (1) the Attorney  
19 General's Office to produce CCDC carport camera footage for January 8, 2014 from approximately  
20 noon to 2 p.m., and (2) the Clerk of Court to subpoena the Attorney General's Office for camera  
21 footage of the court holding tanks in the hallway next to Metro. *Id.* at 3. Finally, Plaintiff asks the  
22 Court for assistance in obtaining camera footage from CCDC of the court holding tank where  
23 Plaintiff claims he was singled out by Ted Nielson on June 18, 2019. *Id.* at 4.

24 With respect to Interrogatory No. 4, in addition to objections, Defendant Osborne responded  
25 that he has no "specific knowledge regarding the cameras at court holding on January 8, 2014, or  
26 any other date." ECF No. 114-2 (Defendant Osborne's Answer to Interrogatory No. 4) at 4.  
27 Defendants reiterate this fact in their Opposition to Plaintiff's First Motion to Compel and further  
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<sup>2</sup> Warden Williams was dismissed from this case on May 22, 2018. ECF No. 34.

<sup>3</sup> Plaintiff's Interrogatory No. 4 asks Defendant Kenneth Osborne: "What do you know about the cameras at court holding on Jan. 8, 2014, under carport 8, in the hallways? Expectations of P.Q.#4...To establish grounds for a court order for camera footage. Do they hold records? How long? Are they available? Do/Did Inspector General retrieve camera footage?" ECF No. 114-1 (Plaintiff's First Set of Interrogatories Directed to Kenneth Osborn[e]) at 8.

1 state that “Osborne is a NDOC Corrections officer and does not have any knowledge of the camera  
2 system at either the court or CCDC, as neither the court nor CCDC are NDOC facilities.” ECF No.  
3 114 at 4-5.

4 Plaintiff’s Second Motion to Compel requests the Court compel Defendant Nielson and  
5 Deputy Attorney General “M. Feeley” to produce the January 8, 2014 Inspector General report  
6 “involving Ted Neilson [sic].” ECF No. 107 at 1–2. Plaintiff represents that he “submitted a written  
7 request for these documents . . . on May 18, 2019,” but the documents have not been received. *Id.*  
8 at 2:4–7. Defendant Nielson objected to Plaintiff’s request because it assumes a battery occurred,  
9 which Defendant disputes. ECF No. 115-2 (Defendant Nielson’s Response to Plaintiff’s Request  
10 for Production of Documents No. 1) at 5. In their Opposition to Plaintiff’s Second Motion to  
11 Compel, Defendants explain that Nielson “is a NDOC Corrections Officer and does not work for the  
12 Inspector General’s Office. Defendant Nielson is not in possession of an I.G. report concerning the  
13 January 8, 2014 incident nor is he aware if the report even exists.” ECF No. 115 at 4.

14 Plaintiff’s Third Motion to Compel moves the Court to compel Defendant Nielson to fully  
15 respond to Interrogatory No. 1.<sup>4</sup> ECF No. 120 at 1. Plaintiff also requests the Clerk of Court  
16 subpoena the Attorney General’s office to produce all incident reports for the past 25 years, any  
17 reports from the Incident Review Panel, and all reports and events in the Nevada Offender Tracking  
18 Information System (“NOTIS”) involving Defendant Nielson. *Id.* at 3. In response, Defendant  
19 Nielson objected to Interrogatory No. 1 as overly broad and then stated that, “excluding the present  
20 matter, Defendant has had one grievance filed against him regarding excessive force; however, this  
21 was dismissed after a use of force panel was convened and found that Defendant did not use  
22 excessive force.” ECF No. 122-2 (Defendant Nielson’s Answer to Interrogatory No. 1) at 2.

23 Plaintiff’s Fourth Motion to Compel requests the Court compel Defendants’ counsel  
24 Matthew P. Feeley to produce “Plaintiff[’]s medical record from . . . January 8, 2014,” and “Inspector  
25 General[’]s Report(s) on . . . January 8, 2014 [and] January 29, 2014.” ECF No. 125 at 1, 3. Plaintiff  
26 requests: “[a] list of Inmate[’s] names, BAC#s, [l]ocation[s] who were in Transport Van on January

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27 <sup>4</sup> Plaintiff’s Interrogatory No. 1 asks Defendant Ted Nielson to: “[l]ist & identify all inc[i]dents, grievances,  
28 lawsuits against [Nielson] for assault & [b]attery, use of excessive force, [and] failure to [p]rotect.” ECF No. 122-1  
(Plaintiff’s First Set of Interrogatories Directed to Ted Nielson) at 7.

1 8, 2014” from unspecified Defendants. *Id.* at 2. Plaintiff continues to request Defendant Nielson’s  
2 NOTIS records and “[a] subpoena ordering Clark County Detention Center to [p]roduce camera  
3 footage.” *Id.* In their Opposition to Plaintiff’s Fourth Motion to Compel, Defendants note that “Mr.  
4 Feeley is not a party to this action, but is counsel who represents the Defendants in this matter. As  
5 such, it was improper for Plaintiff to serve a discovery request directed to Matthew P. Feeley in the  
6 first place.” ECF No. 126 at 3 (citation omitted).

7 Plaintiff requests varying amounts of expenses in his four Motions to Compel, but never  
8 elaborates on how he arrived at the amounts requested. ECF Nos. 106 and 107 at 2; ECF No. 120  
9 at 2; ECF No. 125 at 2.

10 **B. Plaintiff’s Motion to Appoint Private Investigator (ECF No. 108)**

11 Plaintiff moves the Court to appoint a private investigator at the state’s expense. ECF No.  
12 108. Plaintiff argues that he requires “expert witness testimony by medical examiners,”  
13 “[d]epositions to be given . . . ,” and “[p]rivileged & [p]rivate information [to be] gathered.” *Id.* at  
14 1. In support of this motion, Plaintiff cites his lack of experience litigating a civil case, notes he is  
15 proceeding *in forma pauperis*, and claims he has only six cents remaining on his inmate trust account.  
16 *Id.* at 2.

17 **C. Plaintiff’s Motion for Appointment of Counsel (ECF No. 109)**

18 Plaintiff asks the Court to appoint counsel to represent him in this case pursuant to 28 U.S.C.  
19 § 1915(e)(1). ECF No. 109. Plaintiff maintains he is not able to effectively represent himself  
20 through these proceedings because his “arms are in severe pain” and his “tendons [and] muscles fuse  
21 together when in continued use.” *Id.* at 2. Plaintiff further contends that, as an inmate, he is restricted  
22 from keeping certain information he is seeking on his person or in his possession. *Id.* at 3. Plaintiff  
23 alleges that he “has limited access to the law library[,] limited knowledge of the law, [and] a general  
24 education diploma.” *Id.* at 4. Plaintiff also says that he suffered severe head trauma as a result of  
25 Defendants’ actions and suffers from Attention Deficit Disorder. *Id.* Plaintiff claims that if the case  
26 proceeds to trial, he will “not likely be able to articulate this case befor[e] the jury [because he] has  
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1 a phobia talking to strangers or large crowds[, which] creat[es] severe anxiety.” *Id.* Plaintiff  
2 concludes that he is “unable to afford an attorney,” and the few attorneys who he has contacted have  
3 not expressed “much interest” in his case. *Id.* at 5.

4 **D. Plaintiff’s Order to Show Cause for a Preliminary State of Nevada Injunction**  
5 **and a Temporary Restraining Order (ECF Nos. 110 and 111).**

6 Plaintiff requests injunctive relief “enjoining the [D]efendants, their successors in office,  
7 agents & employees & all other persons acting in concert & participation with them, from . . .  
8 gathering . . . general population inmates together with protective custody [inmates] . . . in transport  
9 vans [and] court holding tanks.” *Id.* at 1-2. Plaintiff also seeks injunctive relief restraining  
10 “[D]efendants Ted Neilson [sic], Kenneth Osborn[e], & each of their officers, agents, employers, &  
11 all persons acting in [concert] or participating with them . . . from [r]etaliati[ng], [r]iduc[li]ng, [or]  
12 act[ing with] ag[g]ression towards Plaintiff Dryden for filing [his] civil complaint against  
13 Defendants.” *Id.* at 2.

14 **II. DISCUSSION**

15 **A. Plaintiff did not meet and confer with Defendants before filing his Motions to**  
16 **Compel in Violation of Fed. R. Civ. P. 37(a)(1) and LR 26-7(c), and Defendants**  
17 **have properly responded to the discovery requests.**

18 Fed. R. Civ. P. 37(a)(1) requires a party “mov[ing] for an order compelling disclosure or  
19 discovery . . . [to] include a certification that the movant has in good faith conferred or attempted to  
20 confer with the person or party failing to make disclosure or discovery in an effort to obtain it without  
21 court action.” Local Rules of Practice (“LR”) 26-7(c) further states that “[d]iscovery motions will  
22 not be considered unless the movant (1) has made a good-faith effort to meet and confer . . . before  
23 filing the motion, and (2) includes a declaration setting forth the details and results of the meet-and-  
24 confer conference about each disputed discovery request.” LR IA 1-3(f)(1) permits an incarcerated  
25 individual appearing *pro se* to satisfy the meet-and-confer requirement through written  
26 communication. Provided the meet and confer requirement is met, “[a] party seeking discovery may  
27 move for an order compelling an answer, designation, production or inspection . . . if a party fails to  
28 answer an interrogatory submitted under Rule 33; or a party fails to produce documents . . . as  
requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B)(iii); (iv).

1 In a prior order in the same case, Judge Foley (Ret.) explained that “[a] motion for an order  
2 compelling disclosure or discovery is governed by Rule 37 of the Federal Rules of Civil Procedure  
3 and provides that ‘the motion must include a certification that the movant has in good faith conferred  
4 or attempted to confer with the person or party failing to make disclosure in an effort to obtain it  
5 without court action.’ Fed. R. Civ. P. 37(a)(1).” ECF No. 83 at 1. In this same Order, the Court  
6 explained to Plaintiff that he must meet and confer with Defendants “to attempt to resolve the dispute  
7 pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule (“LR”) IA 1-3(f) and  
8 LR 26-7.” Plaintiff’s Motions to Compel fail because he does not evidence that he made any effort  
9 to meet and confer with Defendants, in accordance with the Rules and as explained by Judge Foley,  
10 before filing these motions. *Id.*<sup>5</sup>

11 Moreover, even if Plaintiff had met and conferred with Defendant prior to bringing the  
12 present motions, the Court finds that Defendants have satisfactorily responded to Plaintiff’s  
13 discovery requests. Plaintiff cannot ask the Court to compel discovery responses simply because he  
14 is dissatisfied with the answers received. Defendants Nielson and Osborne cannot be expected to  
15 turn over evidence they do not have. Additionally, Michael P. Feeley is the Deputy Attorney General  
16 representing Defendants in this matter, and is not a party to this action. “A party may [only] serve  
17 on any other party a request [for production] within the scope of Rule 26(b).” Fed. R. Civ. P. 34(a).

18 There is also no basis for ordering payment of expenses in this case. Fed. R. Civ. P.  
19 37(a)(5)(A)(i)–(iii). Plaintiff did not attempt to obtain discovery responses without court  
20 intervention; Defendants’ responses were substantially justified; and, Plaintiff provides no  
21 explanation or support as to how he arrived at his requested expenses. The Court therefore denies  
22 Plaintiff’s Motions to Compel Discovery (ECF Nos. 106, 107, 120, 125) and the requested expenses  
23 therein.

24 **B. A court appointment of a private investigator is inappropriate at this time.**

25 “The expenditure of public funds on behalf of an indigent litigant is proper only when  
26 authorized by Congress.” *Santos v. Baca*, Case No. 2:11-cv-01251-KJD-NJK, 2014 WL 12910916,

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27 <sup>5</sup> The parties’ Inmate Early Mediation Conference took place prior to service of the disputed discovery requests.  
28 ECF No. 40. Therefore, when Plaintiff spoke with Matthew Feeley at this conference, Defendants had not yet received,  
nor had a chance to respond to, Plaintiff’s discovery requests.

1 \*2 (D. Nev. Aug. 19, 2014), *citing Tedder v. Odel*, 890 F.2d 210, 211–12 (9th Cir. 1989). Here, the  
2 two potential sources of Congressional authorization are the *in forma pauperis* statute, 28 U.S.C. §  
3 1915, and the Criminal Justice Act, 18 U.S.C. § 3006A. However, “[t]he *in forma pauperis* statute,  
4 28 U.S.C. § 1915, does not authorize the expenditure of funds for a private investigator.”  
5 *Covarrubias v. Gower*, No. C-13-4611 EMC (pr), 2014 WL 342548, \*1 (N.D. Cal. Jan. 28, 2014)  
6 (internal citation omitted). In addition, the Criminal Justice Act, 18 U.S.C. § 3006A, does not apply  
7 because this is a civil, not a criminal, matter. Therefore, no Congressional authorization exists for  
8 the Court to appoint a private investigator.

9 Accordingly, Plaintiff’s Motion to Appoint Private Investigator (ECF No. 108) is denied.

10 **C. Plaintiff has not demonstrated the exceptional circumstances necessary for an**  
11 **appointment of counsel.**

12 Generally, a person has no right to appointed counsel for Section 1983 claims. *Storseth v.*  
13 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981) (internal citation omitted). However, “[t]he court  
14 may appoint counsel under section 1915 . . . under ‘exceptional circumstances.’” *Terrell v. Brewer*,  
15 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an evaluation  
16 of both the likelihood of success on the merits [and] the ability of the petitioner to articulate his  
17 claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789  
18 F.2d 1328, 1331 (9th Cir. 1986) (internal citation and quotation marks omitted). Neither of these  
19 considerations is dispositive and must be analyzed together. *Id.*

20 Based on the allegations presented, the Court finds Plaintiff may succeed on some of the  
21 merits of his case; however, Plaintiff has demonstrated sufficient writing ability and legal knowledge  
22 to articulate his claims. Further, as Defendants point out, “an inability to afford counsel, not having  
23 been able to retain counsel, and being imprisoned, do not rise to the level of requiring the  
24 appointment of counsel.” ECF No. 118 at 3:17–24 (citing *Garcia v. Smith*, No. 10cv1187  
25 AJB(RBB), 2012 WL 2499003, at \*4 (S.D. Cal. June 27, 2012)). Whereas the Court is sympathetic  
26 to Plaintiff’s physical health and acknowledges that Plaintiff is subject to “regulations/rules  
27 restricting possession of . . . materials [he] is requesting[.]” neither consideration can be said to  
28 constitute an exceptional circumstance faced by *pro se* inmate litigants. ECF No. 108 at 2; *see also*



1 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (finding district court did not abuse its discretion  
2 by declining to appoint counsel for inmate who alleged he was likely to succeed on the merits,  
3 suffered from pain limiting his ability to prepare for trial, and denied access to legal documents).  
4 Finally, the facts Plaintiff alleges and the issues he raises are not substantially complex. Although  
5 discovery may be essential in order for Plaintiff to further develop his claims, the need for such  
6 discovery does not necessarily render the issues involved as “complex.” “If all that was required to  
7 establish successfully the complexity of the relevant issues was a demonstration of the need for  
8 development of further facts, practically all cases would involve complex legal issues.” *Wilborn*,  
9 789 F.2d at 1331. The Court therefore denies Plaintiff’s Motion for Appointment of Counsel (ECF  
10 No. 109).

11 **D. Plaintiff fails to demonstrate irreparable harm if his request for injunctive relief**  
12 **is denied.**

13 A preliminary injunction is an “extraordinary and drastic remedy . . . never awarded as of  
14 right.” *Munaf v. Green*, 553 U.S. 674, 689–90 (2008) (internal citations omitted). Under the  
15 Supreme Court’s four-prong test in *Winter v. Natural Resources Defense Council, Inc.*, “[a] plaintiff  
16 seeking a preliminary injunction [or temporary restraining order] must establish that he is likely to  
17 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,  
18 that the balance of equities tips in his favor, and that an injunction is in the public interest.” 555  
19 U.S. 7, 20 (2008) (internal citations omitted). Generally, the *Winter* test requires “plaintiff to make  
20 a showing on all four prongs.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th  
21 Cir. 2011). However, “if a plaintiff can only show that there are ‘serious questions going to the  
22 merits’—a lesser showing than likelihood of success on the merits—then a preliminary injunction  
23 may still issue if the “balance of hardships tips sharply in the plaintiff’s favor,” and the other two  
24 *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir.  
25 2013) (citing *id.*).

1           The second *Winter* factor requires a plaintiff to demonstrate likely—not just possible—  
2 irreparable harm in order to obtain preliminary injunctive relief.<sup>6</sup> *Interface Operations LLC v.*  
3 *Laungisa*, No. 2:16-CV-280 JCM (CWH), 2016 WL 706192, \*2 (D. Nev. Feb. 22, 2016).  
4 “Speculative injury cannot be the basis for a finding of irreparable harm.” *In re Excel Innovations,*  
5 *Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007). Here, Plaintiff fails to establish irreparable harm in the  
6 absence of preliminary injunctive relief. Judge Dorsey previously found that the “scant facts”  
7 Plaintiff provides are insufficient to support his argument that he is likely to suffer irreparable injury  
8 in the absence of preliminary injunctive relief. ECF No. 11 at 4. Not much has changed since Judge  
9 Dorsey issued her Order on July 7, 2016. In fact, Plaintiff has now been integrated with GP inmates  
10 for more than five years without incident. Further, Plaintiff claims he is in danger of being retaliated  
11 against because he “has been told that . . . CO Neilson [sic] will not be on any future escorts, yet he  
12 [was].” ECF Nos. 110 and 111 at 5–6. However, the attached Inmate Grievance Report reveals that  
13 when it was discovered CO Nielson was on the same transportation vehicle as Plaintiff, NDOC  
14 immediately assigned Transport Officer Adam Burnside as an escorting officer and notified the  
15 transportation office. ECF Nos. 110 and 111 at 9. During this trip, “Nielson had no conversation  
16 with . . . Dryden and no direct contact,” and, thereafter, the NDOC Lieutenant ordered that “Nielson  
17 [is] not to be involved in any future escorts involving . . . Dryden.” *Id.* Plaintiff does not dispute  
18 any of these findings. Plaintiff therefore fails to demonstrate likelihood of irreparable harm in the  
19 absence of preliminary injunctive relief.

20           Because Plaintiff fails to satisfy the second prong of the *Winter* test, and Plaintiff must satisfy  
21 all four prongs in order to justify imposition of injunctive relief, the Court denies Plaintiff’s Motion  
22 for Preliminary Injunction (ECF No. 110) and Plaintiff’s Motion for Temporary Restraining Order  
23 (ECF No. 111).

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26           <sup>6</sup> The Court discusses the second *Winter* factor first, because it is dispositive as to whether preliminary injunctive  
27 relief shall issue. That is, preliminary injunctive relief may be imposed even if Plaintiff demonstrates “a lesser showing  
28 than likelihood of success on the merits [the first *Winter* factor].” *Shell Offshore, Inc.*, 709 F.3d at 1291 (internal citation  
omitted). However, Plaintiff *must* demonstrate irreparable harm in the absence of preliminary injunctive relief in order  
for the Court to grant a preliminary injunction or temporary restraining order.

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